

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1292 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
No. 1 - Yes No 2 to 5 - No

BHANUSHANKAR O MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR PK JANI for Petitioner
Mr. Mukesh Patel, AGPfor Respondent No. 1
Mr. N.V. Anjaria for MR DS NANAVATI for
Respondent No. 2
MR YATIN SONI for Respondent No. 3,4,16,17
MR BD KARIA for Respondent No. 5-15

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 27/02/98

ORAL JUDGEMENT

Heard Mr. Jani, learned counsel for the petitioner and Mr. N.V. Anjaria, learned counsel for G.I.D.C. I have also heard Mr. Yatin Soni learned counsel for respondent Nos. 3,4,16, 17 as well as the learned A.G.P. for the State of Gujarat. The award made

by the Land Acquisition Officer dated 29.6.1983 was challenged by the petitioner and respondent Nos. 3 to 17 during the land reference proceedings before the District Judge, Rajkot. Shri Laxman Nagarbhai was examined as witness of the State Government. The learned counsel for the G.I.D.C for whose benefit the land is acquired made an oral request to permit him to cross-examine the said witness. This prayer was accepted by the learned judge on the ground that the witness is not supporting the Government and as such he could be cross-examined by the counsel for the G.I.D.C. Against the said order dated 8.8.1997 the petitioner has approached to this court by way of revision under Section 115 C.P.C.

Mr. Anjaria learned counsel for the petitioner has raised a preliminary objection with respect to the maintainability of this revision. It is submitted that by the impugned order dated 8.8.1997 the learned judge has not adjudicated anything and as such the order does not fall in the category of case decided. He has placed reliance on a decision of this court in the case of AIR 1963 GUJARAT 241 and a decision of the apex court in BALDEV DAS SHIV LAL AND ANOTHER VS. FILMISTAN DISTRIBUTORS reported in AIR 1970 SC 406. There cannot be any dispute to the proposition of law laid down in both the aforesaid cases. However, it is also an established law that if the court has acted in exercise of its jurisdiction illegally or with material irregularity in following a wrong procedure in the matter of cross-examination of a witness the court will have a jurisdiction to exercise under Section 115 of C.P.C. against such the jurisdictional error. A reference may be made to the decision of this court reported in the case of TULSIDAS GIRDHAR LAL VS. SHANTILAL KARSANDAS reported in 1985 GLH 934.

It is only privilege of the adverse party to cross-examine the party whose interest is vital to the interest of the party seeking cross-examination. In the instant case the interest of the State Government and the interest of the GIDC cannot be said to be adverse. However it is submitted by Mr. Anjaria, learned counsel for GIDC that in view of the provisions of Section 154 of the Evidence Act a party who calls the witness may put any question to him with the permission of the court. The learned counsel has also invited my attention to the decision of the apex court reported in SAT PAUL VS. DELHI ADMINISTRATION reported in AIR 1976 SC 294 wherein the court has held that for permitting the witness be cross-examined by the party who have called him it is not necessary to declare him a hostile witness. There can be

no dispute to this proposition of law as well. However, in the present case Shri Laxmanbhai Nagarbhai is a witness of the State Government and therefore it is only the counsel for the State Government can cross-examine him with the permission of the court under the provisions of Section 154 of the Evidence Act. This privilege cannot be availed by the counsel for the G.I.D.C. I am unable to agree with the submission of Mr. Anjaria that as the interest of the GIDC and the State Government is same the said witness is to be considered as a witness of GIDC as well. Be that as it may the State Government and GIDC are two different parties and the witness has been called by the State Government. Mr. Anjaria has invited my attention to the affidavit filed by Divisional Manager of GIDC wherein it is stated that the said witness was non-cooperative and therefore it was necessary to cross-examine him. If it is so, an appropriate request can be made by the learned counsel for the State Government to cross-examine him. But this privilege cannot be extended to the counsel for the GIDC. In view of this, the learned judge has committed material illegality in exercise of jurisdiction in permitting the counsel for the GIDC to cross examine the witness produced by the State Government. In view of the aforesaid, the Civil Revision Application is allowed and the impugned order dated 8.8.1997 is quashed and set aside. It is made clear that if the counsel for the State Government makes an appropriate prayer for cross-examination of the said witness, the same shall be considered by the court in right perspective. Rule is made absolute to the aforesaid extent.

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